

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 70
(UNITED PARCEL SERVICE (UPS))

and

Case 32–CB–279104

GIGI WILSON BUTLER, an Individual

D. Criss Parker, Esq.,
for the General Counsel.
Andrew H. Baker, Esq.,
for the Respondent.

DECISION

STATEMENT OF THE CASE

ELEANOR LAWS, Administrative Law Judge. This case was tried using the Zoom for Government platform on November 8, 2021. Gigi Wilson Butler (the Charging Party or Wilson Butler) filed the charge on June 28, 2021¹ and the General Counsel issued the complaint on August 17. The International Brother of Teamsters, Local 70 (the Respondent or Union) filed a timely answer denying all material allegations.

The Complaint alleges the Respondent violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) when, in early June 2021, the Union’s Secretary-Treasurer Marty Frates told employees at a group meeting that they should not raise issues about job assignments regarding coworkers with the employer and threatened that they could be physically injured for raising such issues.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

¹ All dates are in 2021 unless otherwise indicated.

FINDINGS OF FACT

I. JURISDICTION

5 United Parcel Service (UPS or the Employer), an Ohio corporation with an office and
place of business in Oakland, California, transports freight. During the relevant time period, the
Employer derived gross revenues in excess of \$50,000 for the transportation of freight from the
State of California directly to points outside of California. The Employer admits, and I find, that
10 it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the
Act. The Union admits, and I find, it is a labor organization within the meaning of Section 2(5)
of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

15 The Respondent is the exclusive collective-bargaining representative of the following
unit of employees at UPS's Oakland facility:

20 All employees in the classifications set forth in the Wage Schedule or Addenda of the
Collective Bargaining Agreement between the Employer and various local unions
including Respondent, in effect by its terms from August 1, 2018, through July 31, 2023.

25 Charging Party Gigi Wilson Butler, who has worked for UPS since September 2019, has been a
bargaining unit member since February 2020. Wilson Butler reports to Urszulka "Shug"
Calloway, who in turn reports to Kalynda Walton and Nicole Brown.

30 Marty Frates is the Union's secretary-treasurer, which is the highest ranking position with
the Respondent. He has served as the Union's business agent since the early 1980's. Chet
Scorsonelli is a union steward.

35 Employees who work in UPS's sort department sort parcels by geographical areas and
zip codes. During the relevant time period, Wilson Butler worked in the small sort department,
which entails working with small parcels under 7 pounds. The small sort department has a front
section and a back section. The front section is sometimes referred to as scanning, and the back
section bagging. Wilson Butler worked in the front section in May–June 2021, but had
previously worked in the back section. In Wilson Butler's experience, working in the back
section is harder and more labor intensive because workers constantly use their shoulders to fill
bags and throw them on a belt. Prior to June 2021, assignments within the small sort department
40 were assigned by seniority.²

² Both parties agree that within small sort, assignments were done by seniority prior to June 1. It is unclear from the record whether employees with seniority were assigned to a certain area within small sort or whether they had their choice of assignment.

Scorsonelli told Frates that there was a lot of bickering among the small sort employees about assignments.³ In May, Calloway told employees that UPS planned to rotate positions in small sort starting June 1. She did not say when or why management made this decision. The change was implemented as planned, and on June 1, a schedule was posted with a monthly rotation of employees between scanning and bagging.

According to Wilson Butler, some employees were unhappy with the rotation. She heard Theresa Padilla complain that the rotation was not fair, she was not going to work in the back because she had the most seniority, and she was going to call the Union. Wilson Butler saw Babaranti Oloyede (nicknamed “Bubba”) look at the new schedule and shake his head with what she perceived as a disgusted expression on his face.⁴

On June 2, Walton held a meeting of the small sort employees in a conference room at the facility. Present at the meeting were Walton and another supervisor, the small sort employees (except for Wilson Butler until later in the meeting), three shop stewards including Scorsonelli, and Frates. Walton said she was tired of the internal complaints, and if the employees did not sort things out, she would start to remove people from small sort.⁵ Frates then asked Walton to leave so he could meet with the employees. While taking her break with a coworker, Wilson Butler, who had been unaware of the meeting, was informed of it while it was already in progress. She therefore arrived at the meeting late, and she did not hear Walton’s comments. People were talking among themselves when Wilson Butler entered the conference room.

According to Wilson Butler, Frates said he had heard that some employees had asked that assignments be rotated. He told employees that small sort was a good job, everyone needs to do their job, and nobody should be complaining. Frates said he thought assignments should be done by seniority, but he would let employees vote.⁶

³ According to Frates, Scorsonelli told him that Walton told Scorsonelli that management was tired of the bickering in small sort and was going to make some changes. This is double hearsay and is not given weight. See *Auto Workers Local 651 (General Motors)*, 331 NLRB 479, 481 (2000). Though Frates and Scorsonelli are parties, Walton is not, and her purported statement to Scorsonelli, as conveyed by Frates, does not otherwise meet a hearsay exception or exclusion.

⁴ Wilson Butler’s statement about what Padilla said is hearsay, and her testimony about Oloyede is an uncorroborated impression of his body language. They are not entitled to any significant weight other than to corroborate the record evidence that assignments within the small sort department caused friction. Butler did not know whether Oloyede favored assignment by seniority and the record does not establish whether he worked in the front or back section prior to June 1. (Tr. 47.)

The abbreviations used in this decision are “Tr.” for transcript, and “GC Exh.” for General Counsel’s exhibit. Though I have made specific references to the record, I emphasize that my decision is based on my review of the entire record.

⁵ Walton’s comment, as reported by Frates, is hearsay, and on its own is not accorded much weight. As noted in the footnote directly above, however, it is clear from Wilson Butler and Frates’ testimony, and the fact that the meeting took place and the matter was put up for a vote, that there was friction over assignments in the small sort department.

⁶ Wilson Butler offered different accounts of what Frates said regarding how assignments should be made. She testified that Frates said, “I don’t think it should be done by rotation; I think it should be done by seniority.” (Tr. 38.) In the immediate follow-up, she testified:

Q And did he say something else?

A I will let you vote - but I will let you vote.

Padilla and employee Mahmud Hussein raised their hands.⁷ Wilson Butler raised her hand and said she disagreed with the seniority system because she did not think it was fair, as she had the lowest seniority and people with the highest seniority didn't work. According to
 5 Wilson Butler, Frates, who was sitting directly across from her, responded that it was nobody's business who didn't work, and nobody should be going to management about it. Wilson Butler recounted the following:

10 He looked directly at me, and said, if I have two employees and one employee snitches on another employee and that employee gets fired, well, that's snitching. Snitches - he turned his head - said, get - and then he came back and said, I'm not going to say it, but I'm from Oakland and you know what that means. He was looking directly at me the whole time.

15 (Tr. 39–40.) Frates recalled saying something akin to what Butler recounted, but he did not specifically recall seeing her at the meeting.⁸ Wilson Butler was not aware of any other employees who supported the rotation system at the time, though she had not complained to management about it.

20 Wilson Butler felt that Frates had threatened her, so she got up and left. Wilson Butler ran into Walton and Brown in the hall, told them that Frates had been rude and disrespectful, and said she needed to get out of small sort. She also reported Frates' conduct to Calloway and said she needed to leave. Wilson Butler clocked out and went home. She was transferred to a different department within the same bargaining unit at the same facility.

25 The following day, Wilson Butler ran into Scorsonelli, who had seen her leave the meeting. Scorsonelli asked how she was doing, and Wilson Butler said Frates had threatened her. Scorsonelli said, "I don't think he meant it that way."⁹ (Tr. 43.)

Q And did he say something else?

A Sorry. I don't remember what - I know he said he didn't think it should be done by seniority, but he would let us vote. (Tr. 38.)

I am not sure whether the discrepancy was intentional, an unintentional slip of the tongue, or a transcription error. By Frates' own account, however, he said he thought it should be done by seniority.

⁷ It is somewhat unclear what they raised their hands to vote for, as the Wilson Butler testified they voted for "whether we did it by seniority." (Tr. 39.) The most reasonable assumption is that at least Padilla voted to keep assignments by seniority. Hussein's seniority is not a matter of record, so it is unclear how he would likely vote.

⁸ Frates recalled saying something like, "From where I come from, that if you snitch on somebody, you've got to be aware because you don't know who you're talking to." (Tr. 55.) He did not dispute, however, that what he said was along the same lines as what Wilson Butler recounted. And the two comments are in essence the same—i.e. make the wrong person mad by snitching on them, and harm may result.

⁹ This is yet another uncorroborated hearsay statement and is therefore given little weight. The General Counsel asserts that Scorsonelli was an agent of the union. This was never alleged in the complaint, however, and there is no evidence establishing agency.

Asked if he was threatening that the Union would act against members who complained, Frates responded:

Absolutely not. I was trying to make the point that when you start talking about somebody, you don't know who you're talking to or talking about, and that's when you have to be aware. And that if you have a problem, I am not shy. I will come down, and we will take care of it, just like I was doing that night.

(Tr. 55.)

B. Legal Standards and Analysis

The Act, at Section 8(b)(1)(A) states, “It shall be an unfair labor practice for a labor organization or its agents-- (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7.” Section 7 confers on employees “the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . .” In *NLRB v. Drivers Local 639*, 362 U.S. 274 (1960), the Supreme Court stated:

Section 8(b)(1)(A) is a grant of power to the Board limited to authority to proceed against union tactics involving violence, intimidation, and reprisal or threats thereof—conduct involving more than the general pressures upon persons employed by the affected employers implicit in economic strikes

While most threats falling under 8(b)(1)(A) take place in the context of a strike/picket or election, the statute explicitly prohibits threats that restrain employees’ Section 7 rights regardless of context. Evidence showing unlawful intent or that the threat was effective is not required to support an 8(b)(1)(A) violation. *Local 542, International Union of Operating Engineers v. NLRB*, 328 F.2d 850 (3d Cir.), cert denied, 379 U.S. 826, 85 S.Ct. 52 (1964).

It is undisputed that Frates is a union agent. It is also undisputed that during the group meeting, in response to Wilson Butler’s comment that her coworkers with seniority didn’t work, Frates said (or at the very least implied) that snitching on a coworker for failing to do his or her job may result in harm.¹⁰ This is true whether Frates said, “snitches get . . . I’m from Oakland and you know what that means” as a thinly veiled reference to the familiar idiom “snitches get stitches,” or whether he warned employees that if they snitch on someone, they need to be aware, because they don’t know who they’re dealing with. Either way, it is clearly a threat to employees that they should not snitch on their coworkers to management or they may face harm.¹¹

¹⁰ Frates didn’t remember whether Wilson Butler was at the meeting, but he did not dispute it. Wilson Butler’s account is therefore unrefuted. Admittedly, Butler and Frates had never spoken before, so the fact that Frates testified he did not recall whether Butler was at the meeting does not strike me as disingenuous. Moreover, Wilson Butler said that employees were talking among themselves when she entered the meeting, so her joining the meeting was not likely particularly notable.

¹¹ I find Frates’ statement was a threat regardless of the evidence the General Counsel introduced about other workplace violence incidents. (GC Exhs. 3–8.) I also don’t find material the presence of gang activity in the Oakland area, especially considering the absence of competent evidence tying any small

The remaining question is whether Frates’ threat would coerce employees to refrain from engaging in actions protected by Section 7—here, protected concerted activities for mutual aid and protection. Both the elements of concertedness and protection under the Act must be met.

For the following reasons, I find that the fact that the threat occurred while Wilson Butler was raising concerns protected by Section 7 would reasonably restrain employees from engaging in similar protected concerted activity.

The Board has held that activity is concerted if it is “engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself.” *Meyers Industries (Meyers I)*, 268 NLRB 493 (1984), revd. sub nom *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985), on remand *Meyers Industries (Meyers II)*, 281 NLRB 882 (1986), affd. sub nom *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). Concerted activity also includes “circumstances where individual employees seek to initiate or to induce or to prepare for group action” and where an individual employee brings “truly group complaints to management’s attention.” *Meyers II*, 281 NLRB at 887. An individual employee’s complaint is concerted if it is a “logical outgrowth of the concerns of the group.” *Every Woman’s Place*, 282 NLRB 413 (1986); *Mike Yurosek & Son, Inc.*, 306 NLRB 1037, 1038 (1992), after remand, 10 NLRB 831 (1993), enfd. 53 F.3d 261 (9th Cir. 1995).

I find Wilson Butler’s comment at the June 2 meeting was a direct outgrowth of employee concerns regarding assignments in the small sort department, which had been raised to management, prompting the June 1 change. The context here cannot be ignored. This was a group meeting of the small sort department to discuss bickering among employees immediately in the wake of a change in how their jobs were assigned. Though the change was a management decision, Frates put the matter to a vote among members, signaling that the Union had some control or at least sway over the matter. While not everyone in the small sort department was on the same page about how assignments should be made, it is clear there was disagreement among employees. Wilson Butler never brought her concerns about assignments to management prior to the June 1 change, indicating that she was not the sole employee who disagreed with the original seniority system. As such, raising her concerns about assignment allocations in small sort, in a group meeting as part of the group action of voting about them, was concerted activity.

To be protected, an employee’s activity must relate to her wages, hours, or working conditions. See *Waters of Orchard Park*, 341 NLRB 642 (2004). Wilson Butler expressed her belief that assigning work by seniority was unfair. Work assignments are clearly a term and condition of employment. As such, Wilson Butler’s comment was protected under Section 7.

Though Frates’ threat was specifically related to employees snitching on each other for “not working”, it occurred during a meeting where members were voting on how to allocate work assignments immediately following Wilson Butler’s protected comments related to the same. And, while Wilson Butler, as part of her complaint about work assignments, specifically said that senior employees don’t work, the two are intertwined considering the circumstances and

sort employee to any gang. The Respondent’s argument that the Union was not threatening any harm from any union official is likewise unavailing. The threat does not have to relate to any particular perpetrator(s) to be coercive.

setting. Technically, read very narrowly, Frates' threat was not to warn employees against requesting a rotating schedule versus a schedule based on seniority, or any other scheduling issue for that matter. Rather, the threat cautioned that a member should not snitch on a coworker for not working without being ready to face the consequences.¹² Given context and timing, however,

I find an overly narrow interpretation of Frates' comment is not reasonable, and it constituted a threat in violation of Section 8(b)(1)(A). See *Graphic Communications Conference/Teamsters Local 735-S (Bemis Company, Inc.)*, 369 NLRB No. 97, slip op. at 2 (2020).

That said, I do not believe Frates intended to threaten employees. The evidence supports his testimony that management and the Union were tired of the bickering among employees in small sort, and they expected the employees to figure things out without resorting to tattling about each other's work habits. It is clear he wanted his members to act in solidarity rather than run to management with what he saw as petty issues. Frates, a union official dating back to a time when coarse language was more normal, likely did not think his comments were off base. However, as noted above, intent is not an element of a Section 8(b)(1)(A) violation.

Based on the foregoing, I find the General Counsel has proved the Respondent violated Section 8(b)(1)(A) of the Act as alleged in the complaint.

CONCLUSIONS OF LAW

The Respondent, International Brotherhood of Teamsters, Local 70, is a labor organization within the meaning of Section 2(5) of the Act.

United Parcel Service is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

By threatening employees with bodily injury or unspecified reprisals in response to protected activities, the Respondent has violated Section 8(b)(1)(A) of the Act.

The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

¹² Even under a narrow interpretation, the concertedness element is met, as Frates' comments would certainly restrain or coerce a group of two or more employees from reporting to management that a coworker was slacking off. The element of protection under the narrow reading is thornier. Is who you work with a working condition? More specifically, is it a working condition or term of employment to have productive vs. lazy coworkers? Even more pointedly, is an employee's perception of the competence and work ethic of fellow employees a term and condition of employment? Fortunately the can of worms required to answer these questions need not be opened to decide this case.

Having found the Respondent threatened employees with bodily injury or unspecified reprisals in response to protected activities, I shall order the Respondent to cease and desist from such actions.

The Respondent shall post an appropriate informational notice, as described in the attached Appendix. This notice shall be posted in the Respondent's offices or wherever the notices to members are regularly posted for 60 days without anything covering it up or defacing its contents. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. When the notice is issued to the Respondent, it shall sign it or otherwise notify Region 32 of the Board what action it will take with respect to this decision.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹³

ORDER

The Respondent, International Brotherhood of Teamsters, Local 70, Oakland, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with bodily injury or unspecified reprisals in response to protected activities;

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its Oakland, California facility copies of the attached notice marked "Appendix."¹⁴ Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such

¹³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

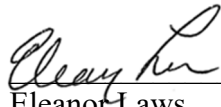
as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 2, 2021.

(b) Within 14 days after service by the Region, deliver to the Regional Director for Region 32 signed copies of the notice in sufficient number for posting by the Employer at its Oakland, California facility, if it wishes, in all places where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 32 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. January 14, 2022


 Eleanor Laws
 Administrative Law Judge

APPENDIX
NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with bodily injury or unspecified reprisals in response to your protected activities.

WE WILL NOT in any like or related manner, restrain or coerce you in the exercise of the rights listed above.

TEAMSTERS, LOCAL 70 (UNITED PARCEL SERVICE (UPS))
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

1301 Clay Street, Federal Building, Room 300N
Oakland, California 94612-5211
Hours: 8:30 a.m. to 5 p.m.
510-637-3300.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/32-CB-279104 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S

COMPLIANCE OFFICER, 510-637-3270.